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Fact Sheet for the Chairman, Special Committee on Investigations, Select Committee on Indian Affairs, U.S. Senate

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INTERNAL CONTROLS

Bureau of Indian Affairs' Section 638 Contracts With Tribal Organizations

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GAO

United States
General Accounting Office
Washington, D.C. 20548

Resources, Community, and
Economic Development Division

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August 18, 1989

The Honorable Dennis DeConcini
Chairman, Special Committee on Investigations
Select Committee on Indian Affairs
United States Senate

Dear Mr. Chairman:

In response to your request, this fact sheet presents information on the current conditions at certain offices of the Department of the Interior's Bureau of Indian Affairs regarding its controls over contracts authorized by the Indian Self-Determination and Education Assistance Act (P.L. 93-638), which was enacted in 1975. These contracts are commonly referred to as section 638 contracts. As agreed with your office, the primary objective of this review was to follow up on problems noted in a September 1981 GAO report on the same subject.[1] Although the 1981 report also reviewed section 638 contracts administered by the Indian Health Service, Department of Health and Human Services, your office asked that we look only at improvements in controls at the Bureau. In March 1989, to meet your needs for the requested information, we agreed to end our review and provide you with the data and information gathered as of that date.

Public Law 93-638 was enacted to provide a legal framework for tribal organizations to manage their own affairs. The law authorizes the Bureau to award contracts to tribal organizations to administer programs such as tribal courts, law enforcement, and social services that otherwise would be administered by the Bureau. Nationwide in fiscal year 1988, the Bureau awarded about 1,800 section 638 contracts amounting to about $364 million.

In summary, for the offices we reviewed, we found that the Bureau had corrected some problems noted in our 1981 report,

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[1]Still No Progress in Implementing Controls Over Contracts and Grants With Indians (CED-81-122, Sept. 10, 1981).

such as awarding contracts retroactively and not including measurable performance criteria in contracts. But other problems noted in the report--including inadequacies in contract monitoring, financial systems, and management of government property--still exist. Following are highlights of our follow-up review:

-- Bureau contracts, as a rule, are no longer awarded retroactively; the start dates for 93 of the 100 contracts we reviewed were the same as, or later than, their contract award dates.

-- All 100 contracts included measurable performance criteria.

-- Of the 100 contract files, 93 did not include all the required performance monitoring reports and 59 contained no reports at all.

-- One of the three Bureau agency offices we reviewed did not maintain current financial records to ensure that withdrawals by a tribal organization covered only immediate needs and did not result in excess cash on hand.

-- At all three agency offices, government property was not being properly identified and/or inventoried. Three of the four tribal organizations we reviewed did not maintain inventory records by contract.

Section I contains more details on the problems identified in our 1981 report, our recommendations, and the Bureau's actions to correct the identified problems.

During our review, in October 1988, the President signed the Indian Self-Determination And Education Assistance Act Amendments Of 1988 (P.L. 100-472), which amended P.L. 93-638. As a result of this amendment, the Bureau is completely revising its regulations and procedures concerning section 638 contracts, including those affecting the areas discussed in this fact sheet. The Bureau estimates that the regulations and procedures will be completed in early 1990. Because the Bureau was in the early stages of revising the regulations and procedures during our review, we could not determine what impact the final regulations and procedures would have on the areas discussed here.

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We conducted our review at the Bureau's Minneapolis, Minnesota, and Phoenix, Arizona, area offices; the Papago and Pima agencies under the Phoenix office and the Minnesota agency under the Minneapolis area office; and the Gila River Indian Community and the Tohono O'odham Nation, who deal with the Phoenix area office, and the Minnesota Chippewa Tribe and the Leech Lake Reservation Business Committee, who deal with the Minneapolis area office. In fiscal year 1988, the two area offices administered 468 section 638 contracts, or about 26 percent of the national total. These contracts amounted to $65 million, or about 18 percent of the dollars involved nationwide in section 638 contracts. We examined 100 fiscal year 1988 section 638 contract files, 50 in each area office. The contracts selected were generally the 50 largest-dollar-amount contracts. The contracts reviewed at the Phoenix and Minneapolis area offices were valued at about $25 million and $12 million, respectively.

We reviewed the section 638 contract files and related financial records to determine whether improvements in internal controls had been made since our 1981 report. As part of this review, we held discussions with officials of the Bureau's headquarters, area, and agency offices and with officials from tribal organizations. We also examined applicable audit reports issued by the Department of the Interior's Office of Inspector General. Our review was performed between August 1988 and March 1989 in accordance with generally accepted government auditing standards.

As directed by your office, we did not request agency comments. However, the views of Bureau officials, at headquarters and field offices, and tribal organizations were sought during the course of our work and are incorporated where appropriate.

As agreed with your office, unless you publicly announce its contents earlier, we plan no further distribution of this fact sheet until 30 days from the date of this letter. At that time, we will send copies of this fact sheet to the Secretary of the Interior, the Administrator of the Bureau, the Director of the Office of Management and Budget, and other interested parties. We will make copies available to others upon request.

If you would like to discuss these matters further or have any comments, please call me on (202) 275-7756. Major contributors to this fact sheet are listed in appendix I.

Sincerely yours,

James Duffus III
Director, Natural Resources
Management Issues

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ABBREVIATIONS

BIA	Bureau of Indian Affairs
GAO	General Accounting Office
OIG	Office of Inspector General
SCOR	subordinate contracting officer representative

SECTION 1

FOLLOW-UP ON 1981 GAO REPORT FINDINGS

The Indian Self-Determination and Education Assistance Act (P.L. 93-638) was enacted to ensure maximum participation by tribal organizations in planning and administering federal services, programs, and activities for tribal organizations. This participation takes the form of contracts (commonly referred to as section 638 contracts) awarded by federal agencies, such as the Department of the Interior's Bureau of Indian Affairs (BIA), to tribal organizations, which allow them to perform those services, programs, and activities previously performed by the federal agencies. Before the federal agencies can award these contracts, consideration is given to whether tribal organizations have (1) listed the equipment, facilities, and buildings needed to carry out the contract, (2) demonstrated that they have established or can establish acceptable bookkeeping and accounting procedures, (3) acquired substantive knowledge of the program to be contracted for, (4) obtained community support for the contract, (5) trained personnel, and (6) considered other necessary components of contract performance. The law authorizes the federal agencies to award grants to help tribal organizations develop the management capability to operate programs under contract.

Section 638 contracts are administered by BIA's headquarters office in Washington, D.C., and by 12 area offices and 86 agency offices nationwide. Each agency office generally reports to an area office and is responsible for the day-to-day contact with one or more tribes. BIA deals with about 500 tribal organizations and Alaskan Native groups.

A contract awarded by BIA is administered by a contracting officer normally assigned to one of BIA's 12 area offices. Generally, these contracts are awarded on a fiscal year basis. The contracting officer usually designates a contracting officer representative--normally the agency office superintendent of one of BIA's 86 agency offices. The contracting officer, with the assistance of an agency office staff member designated the subordinate contracting officer representative (SCOR), monitors the tribal organization's performance and provides technical assistance when required.

BIA policies and procedures vest all authority for administering section 638 contracts with the contracting officer at the area office. This authority extends to awarding contracts, modifying terms and conditions, monitoring performance, controlling contract financing, and closing out contracts. Tribal organizations providing services under the contract are under the cognizance of agency office superintendents, who have no decision-making authority in the administration of the contract. For

contracted programs, the agency office superintendent acts as a contract monitor for the contracting officer and in this capacity is required to keep the contracting officer apprised of contractor performance and to initiate changes to contracts.

To evaluate actual performance against planned performance, tribal organizations submit performance reports at frequencies specified in the individual contract. Basically, the planned performance is based on the statement-of-work section of the contract, which should lay out various work steps and performance criteria. The agency superintendent and/or the SCOR are required to review these reports, visit the sites periodically to determine compliance with the terms of the contracts, meet with the organizations' key personnel to ensure progress, discuss any deficiencies, and provide technical assistance when required. They are also required to prepare and provide periodic evaluation reports, usually quarterly, to the tribal organizations, program officials, and contracting officers.

Prior to 1976, section 638 contracts were funded by quarterly cash advances, but when the volume of these contracts began to increase, letters of credit were established to finance them. Under the letter-of-credit system, a tribal organization submits to BIA a request for funds which identifies the contract number and the amount to be withdrawn. After BIA approves it, the request is sent to the bank at which the letter of credit is established. The Department of the Treasury then wires the money to the appropriate bank account for use by the tribal organization. BIA procedures provide that tribal organizations submit expense vouchers at least quarterly verifying the expenditures. The procedures also provide that requests for such funds coincide with need and not be made too far in advance of the disbursement.

In carrying out the contract, BIA may permit the tribal organization to use federal government buildings and equipment within its jurisdiction. Property and equipment can also be purchased, if necessary, with section 638 contract funds, but BIA regulations require that title to this property or equipment remain with the federal government. The equipment is to be identified and tagged as belonging to BIA. BIA requires, as part of the contract application, that the tribal organizations agree to implement a satisfactory property management system. Records of this property are to be maintained by BIA and inventoried annually.

A 1981 GAO report entitled Still No Progress in Implementing Controls Over Contracts and Grants With Indians (CED-81-122, Sept. 10, 1981) pointed out that section 638 contracts were being awarded retroactively and contained few performance measurement criteria. The report also pointed out that BIA was performing only limited contract monitoring, had poor cash management controls, and generally had inadequate controls over government-owned property.

Our 1981 report was based primarily on a review of 178 section 638 contracts administered by BIA.[1]

The 1981 report covered five BIA area offices and nine tribal organizations. One of the area offices covered--Phoenix, Arizona--and one of the tribal organizations the area office deals with--the Tohono O'odham Nation (formerly the Papago tribe)--were also included in our current review.

We made several recommendations in the 1981 report to improve BIA's policies, procedures, and practices. The Department of the Interior generally agreed with our recommendations and planned to take actions to deal with the problems.

Following is a description of the 1981 report findings, GAO's recommendations and Interior's proposed actions, and 1988-89 conditions regarding contracts awarded retroactively, measurable performance criteria, monitoring contract performance, BIA cash management, and management and control of government property.

CONTRACTS AWARDED RETROACTIVELY

GAO's 1981 Report

Finding. BIA awarded contracts in which the start date preceded the award date (date of approval). BIA awarded 141 of 175 selected contracts and grants from a few days to about 11 months after the contract start date. This practice resulted in reimbursements to tribes for expenses incurred before the contract proposals were approved by BIA.

GAO Recommendation and Interior's Proposed Action. We recommended that BIA prohibit the award of contracts in which the start date precedes the date of award. The Department of the Interior generally agreed that this recommendation would emphasize the need to contract in a timely manner. However, it did not feel that a blanket prohibition was reasonable. In September 1981, Interior's Assistant Secretary for Indian Affairs directed each area office to develop a plan to eliminate retroactive contracts. The plan was to include a system to notify tribal organizations if their applications on continuing contracts are late and improvements in BIA's contract review procedures to eliminate processing delays.

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[1]The 1981 report also addressed 27 section 638 contracts administered by the Indian Health Service, Department of Health and Human Services, and made various recommendations for improving contract administration.

1988-89 Conditions

Section 638 contracts now contain a clause that allows eligible pre-award contract costs. Because these costs can now be paid, the start dates for 93 of the 100 contracts we reviewed were the same, or later than, the contract award dates. The seven contracts awarded retroactively were all from the Minneapolis area office. For six of these seven contracts, the start date preceded the award date by about a month; the other contract was awarded retroactively by about 3 months.

Both area offices we visited attempt to have section 638 contracts start on the first day of the fiscal year. Of the 50 contracts we reviewed at the Phoenix area office, 48 contracts were awarded between 19 days and 253 days after the beginning of the fiscal year. Of the contracts reviewed at the Minneapolis area office, 10 contracts were awarded between 28 days and 323 days after the beginning of the fiscal year.

Officials of the Minneapolis and Phoenix area offices said that contracts awarded after the start of the fiscal year are caused by late requests submitted by the tribe and an insufficient number of BIA staff to prepare and process contracts. According to an official in the Minneapolis area office, such delays in contracting could cause low levels of spending in the early stages of the contract and lead to contract modifications later in the year. An official from the Phoenix area office told us that it encourages tribal organizations to use contract terms other than a fiscal year so that it can better distribute the workload throughout the year.

MEASURABLE PERFORMANCE CRITERIA

GAO's 1981 Report

Finding. BIA was awarding vague and poorly written contracts that did not include adequate performance measurement criteria. We found that 82 of 178 selected contracts had inadequate criteria and 34 had no criteria at all.

GAO Recommendation and Interior's Proposed Action. We recommended that BIA require all contract agreements to include specific criteria against which to measure performance. The Department of the Interior suggested that a better approach would be to strive for a clear, concise statement of work within which a monitoring plan can be developed that is understandable to all parties. Moreover, Interior pointed out that some contracts are for services that do not readily lend themselves to specific measurement criteria. In September 1981, Interior's Assistant Secretary for Indian Affairs directed each area office to carefully review every contract's statement of work to ensure that, to the

extent possible, it included specific criteria against which to measure performance.

1988-89 Conditions

All of the 100 contracts we reviewed included measurable performance criteria.

MONITORING CONTRACT PERFORMANCE

GAO's 1981 Report

Finding. BIA was not adequately monitoring contracts with Indian tribes. Monitoring was a part-time, collateral duty. At two BIA area offices and Indian Health Service area offices, 34 of the 48 contract files examined had no monitoring reports.[2] Of the 14 reports prepared, only 7 addressed contractor performance. Further, the staff responsible for monitoring contract performance received little or inadequate training.

Our 1981 report pointed out the existence of a potential conflict of interest: BIA was using as SCORs to monitor contract performance employees whose primary responsibility was to deal with the tribal organization for program-related issues. Our report also stated that regulations published for administrating section 638 contracts recognize this potential problem. As cited in 25 C.F.R. 271.4(g),

> "Contracting by its very nature places Bureau officials in the dual position of assisting Indian tribes, in many instances, by furnishing technical assistance in preparation of contract proposals, and of carrying out their fiscal and administrative responsibilities as officials of the Federal Government. It is recognized that very often these two positions are in opposition to each other."

GAO Recommendations and Interior's Proposed Action. We recommended that BIA require tribes to submit appropriate financial and program progress reports. We also recommended some organizational changes within BIA designed to increase the independence of the contracting function and reduce undesirable pressures and conflicts of interest. These changes included establishing an independent office within BIA to monitor contract performance and a separate office to perpetuate the goals and objectives of Public Law 93-638. The Department of the Interior agreed to inform BIA offices of the existing regulation requiring tribal organizations to submit their reports on a timely basis.

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[2]The 1981 report included the results of our review of Indian Health Service contracts and did not break out, by agency, the number of contract files that did not contain monitoring reports.

However, Interior did not agree with our recommended organizational changes because it believed that BIA's ability to administer the contracts would be diluted or completely eliminated.

In September 1981, Interior's Assistant Secretary for Indian Affairs directed each area office to establish a procedure that would ensure an on-site review to monitor contract performance. The contracting officer representative is to summarize the review and send a copy to the area office for inclusion in the contract file.

1988-89 Conditions

The BIA agency office normally is required to monitor contract performance, including on-site visits, and submit a monitoring report, at least quarterly, to the contracting officer in the area office for review, approval, and filing. We found that 93 of the 100 contract files we examined at the area offices did not have the required number of BIA quarterly monitoring reports. At the Minneapolis area office, 7 of the 50 contract files we reviewed contained all the required reports, 15 contained one or more of the reports, and 28 contained no monitoring reports. At the Phoenix area office, none of the 50 contract files contained all the required reports, 19 had one or more monitoring reports, and 31 contained no monitoring reports.

None of the three agency offices had all the reports that were missing from the area offices. However, we reviewed 10 contract files, 5 each at the Papago and the Pima agency offices under the Phoenix area office, and found that 9 of the 10 files had some tribal progress reports not in the area office file and 6 of the 10 files contained agency monitoring reports not in the area office file.

Area and agency officials told us that monitoring was limited because it is considered a part-time, collateral duty. The potential conflict of interest pointed out in the 1981 report still exists, as most SCORs administering contracts included in our review continue to also be responsible for dealing with the tribal organization for program-related issues. In addition, of the eight SCORs we interviewed, four told us that they had received no formal training in monitoring contracts, three had received limited training, and one said he was adequately trained. An official at the Papago agency office told us that the office received no funds to provide such SCOR training.

Area and agency office officials told us that reviews of progress reports submitted by the tribal organizations are one of BIA's primary contract monitoring tools. Officials of the four tribal organizations we talked to told us that they received little or no feedback on their progress reports. Gila River Indian

Community officials told us they did not receive feedback even when they identified problems in the report.

The Department of the Interior's Office of Inspector General (OIG) also noted problems with progress reports submitted by the tribal organizations and monitoring reports submitted by the agency offices. In a 1988 report entitled Public Law 93-638 Contract and Grant Administration, Bureau of Indian Affairs (Report No. 89-17, Oct. 1988), the OIG stated that only 49 percent of the required progress reports were being submitted to BIA by tribal organizations and only 27 percent of the monitoring reports required to be submitted by agency personnel were on file at the area office.

At the agency offices we visited, differing relationships with the tribe(s) they dealt with could dictate the extent of agency office contract monitoring and administration. For example, the Tohono O'odham Nation requires that the Papago agency office go through a formal notification procedure before it talks to tribal program officials or monitors contracts on-site. On the other hand, the Gila River Indian Community allows the Pima agency office to play a larger role in monitoring section 638 contracts. The office can monitor the contracts without providing formal notification.

BIA CASH MANAGEMENT

GAO's 1981 Report

Finding. Regarding letters of credit, some tribal organizations had withdrawn large amounts of money without submitting timely expense vouchers to BIA, and some had requested funds long before they were needed.

GAO Recommendations and Interior's Proposed Action. We recommended that BIA enforce compliance with the letter-of-credit procedures by precluding tribal organizations from obtaining cash in excess of their immediate needs, requiring tribes to submit timely expense vouchers, and revoking letter-of-credit authority for tribes who fail to comply with procedures. We also recommended that BIA monitor the letter-of-credit withdrawals on each contract to ensure that a tribal organization does not withdraw more than the amount authorized by the contract. The Department of the Interior agreed and stated that it would issue instructions to implement the recommendations. In September 1981, Interior's Assistant Secretary for Indian Affairs instructed the area offices to review (1) all letter of credit drawdowns to determine if funds were being obtained in excess of need and (2) all contract files to determine if expense vouchers were being submitted on a timely basis. If these reviews indicated that tribal organizations were not complying with regulations, the area office should take steps to revoke the letter of credit.

1988-89 Conditions

Two of the three agency offices we reviewed had adequate financial systems to monitor tribal organizations' requests for funds and submissions of expense vouchers. However, the third, the Papago agency office, did not maintain current and updated records to ensure that the amount of the drawdowns on the letters of credit covered only immediate needs and would not result in excess cash on hand. These outdated records were caused largely by the significant, long-term problems the Tohono O'odham Nation has had with its automated system of financial records. Because of these problems the Nation did not supply the Papago agency with the required financial information for about 1 year.

The Department of the Interior's 1988 OIG report found that BIA had not maintained control over letters of credit: It had not properly accounted for letter-of-credit advances and contract disbursements and had not closed out contracts in a timely manner. The review found over 2,000 letters of credit with unliquidated advances totaling over $138 million and some 5,000 contractual obligations that remained open. The report recommended that the Assistant Secretary for Indian Affairs streamline the financial reporting for section 638 contracts by requiring a disbursement report to update financial records and to liquidate contract obligations.

MANAGEMENT AND CONTROL OF GOVERNMENT PROPERTY

GAO's 1981 Report

Finding. Property management systems at five of nine tribal organizations were inadequate or nonexistent. As a result, BIA was unable to determine what government property was being used by the tribal organizations.

GAO Recommendations and Interior's Proposed Action. We recommended that BIA require the tribal organizations to develop adequate property management systems. The Department of the Interior agreed with the recommendation and stated that it would take actions to implement the recommendation. In September 1981, Interior's Assistant Secretary for Indian Affairs directed the area offices to instruct tribal organizations to submit their proposed systems for managing property with their contract application. The area offices were further instructed to ensure that the tribal organizations had a property management system and were using it.

1988-89 Conditions

At the Pima and Minnesota agency offices, government property is not being tagged and inventoried as required because, according to agency office officials, they do not have enough staff to

perform the duty. At the Papago agency office, an inventory system is in place, but the tribal organization at times did not make the agency aware of property purchased with section 638 contract funds.

Neither the Minnesota Chippewa nor the Leech Lake Reservation Business Committee maintains inventory records of section 638 property by contract, and inventory listings for such property are not readily available. The Tohono O'odham Nation also does not keep inventory records by contract, and the Nation has not performed an on-site inventory since 1985. At the Gila River Indian Community, each tribal program director we interviewed kept a list of equipment or property purchased for the section 638 contracts under his or her control.

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